

# **Iowa Attorney General Tom Miller**



**2003 Criminal Legislative Package**  
*Using the law to serve and protect the people of Iowa.*

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## **Criminal Law Legislative Proposals**

### **Financial Crimes/Money Laundering.**

Non-bank money service businesses (such as wire transfer exchange businesses) are susceptible to efforts of drug dealers and other criminals to launder their illegal monies. This is particularly a concern given the extensive nature of Iowa's methamphetamine trafficking. Far too many money service business (MSBs) do not require identifying information about the originators of fund transfers.

Attorney General Miller has had a longstanding concern about financial crimes, particularly money laundering of criminal proceeds. In 1995, he introduced a comprehensive package addressing financial crimes, the Economic Remedy Act. The Act passed in 1996. However, the regulation of MSBs for money laundering purposes was dropped from the initial proposal. In recent years, money launderers have increasingly transferred their money through MSBs because of little oversight and regulation. The Attorney General is proposing legislation to close this regulatory loophole.

a. Background. Criminals should not be allowed to profit from their crimes. The criminals who do not only hurt the economic development of this state, but more importantly harm the children and citizens who purchase their product - drugs. During the mid-1990s, there was a crack-down on money laundering; however drug dealers and other criminals have seemingly found other ways to hide or clean their money mainly through non-regulated MSBs. By cracking down on cash proceeds, a dent will be made in the supply and demand of drug trafficking.

September 11<sup>th</sup> provides yet another reason to improve Iowa's efforts against money laundering. Terrorists will continue to look for every loophole in order to provide them the fuel to operate and expand their enterprises. MSBs with no record keeping requirements provide an easy way for terrorists to move their money without leaving a paper trail. Strengthening the anti-money laundering efforts will help identify the perpetrators and determine who organized and

financed them.

(1) *Definition of Money Laundering.* A report from the National Association of Attorneys General entitled *A State and Local Response to Money Laundering* defined money laundering as follows:

Money laundering is the means by which criminal organizations, such as drug trafficking networks, sanitize ill-gotten gains and convert them into apparently clean assets. Without a money laundering capability, criminal organizations would be marginalized, neither able to sustain and expand their illegal activities, nor invest in and corrupt legitimate businesses or government.

Money laundering begins with crimes that generate proceeds. Sophisticated criminal organizations use these proceeds to expand their operations, wealth and influence. To do this successfully, they employ a variety of artifices, and purchase the assistance of apparently reputable business people and professionals to conceal the origin and true ownership of the tainted proceeds.

Typically, money laundering is effected in three stages. First is "placement" of the ill-gotten proceeds. This entails concealment of the illegal source of the proceeds or conversion of the cash to another medium that is more convenient or less suspicious for purposes of exchange, e.g., negotiable instruments in bearer form, such as cashiers' checks, travelers' checks or money orders made payable to "cash"; precious objects, such as antiques, gems, oriental carpets or metals; motorized vehicles such as automobiles, boats or airplanes; or by depositing the funds into a financial institution account for subsequent dispersal. (footnote omitted)

"Placement" is followed by "layering," the concealing of illicit financial activity under layers of ostensibly legitimate ones, such as the commingling of the proceeds with legitimate funds. This provides the criminal enterprise with the cover of a substantial, legitimate source of income, a ruse to deflect the scrutiny of tax auditors and law enforcement agencies. Typically, "layering" is accomplished by funneling the illicit proceeds through businesses

that are cash-intensive, such as restaurants, bars, vending machines and race tracks. Other convenient laundering vehicles include businesses that trade in assets which appreciate in value, such as jewelry or real estate; that have high markups, such as imports; or that entail big-ticket, quickly depleted inventories, such as car dealerships and computer stores.

Finally, funds are “integrated” back into the criminal enterprise, or are otherwise spent or invested to expand the base of the criminal activities. At the most elementary level, integration can be accomplished with cash or by barter. A more sophisticated criminal enterprise would have numerous options. For example, it could maintain an account in a commercial bank in the name of an apparently innocent nominee, thereby operating in an apparently aboveboard manner and availing itself of the advantages of anonymous and instantaneous electronic funds transfer.

(2) *Money Laundering Through Money Service Businesses.* Due to stronger and tighter regulations on depository financial institutions (i.e. banks, credit unions, and savings and loans), money launderers tend to use money service businesses (MSBs) to move their illegal funds into the regular flow of commerce, thereby disguising their illicit proceeds rather well.

Examples of MSBs where money laundering easily can occur include the following:

- (a) Check sellers. Businesses that take cash from customers and for a fee issue travelers’ checks, cashiers’ checks and/or money orders in return.
- (b) Wire transfer firms. Businesses that, for a fee, take cash from customers, electronically transfer funds to another location, and issue cash, a cashier’s check, or a money order at that second location.

(3) *Addressing the Money Laundering Problem in Iowa.* The Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury maintains that an effective money laundering response requires three components: an effective money laundering law, access to financial intelligence from financial transaction reports, and a designated team to investigate and prosecute violations related to money laundering offenses. The goal of Attorney General Miller is to ensure that Iowa’s response has all three components.

(a) Iowa's Current Money Laundering Law. As mentioned, Iowa has a very strong, comprehensive money laundering law passed in 1996. The law provides a firm foundation to address money laundering in Iowa. Nevertheless, the law contains a significant loophole because MSBs are not effectively monitored or regulated. MSBs, like banks and other institutions, are required to report cash transactions of \$10,000 or more to the IRS. However, multiple cash transactions of smaller amounts go unmonitored, making these institutions susceptible to money laundering by drug dealers and other criminals. This is particularly a concern given the extensive nature of Iowa's methamphetamine trafficking.

(b) New Federal Regulations. Federal regulations went into effect January 1, 2002, requiring MSBs to register with federal officials and to report cash transactions that look suspicious. While these federal requirements may prove to be helpful, MSBs in Iowa handle large amounts of cash with little oversight.

(4) *Attorney General Miller's Legislative Proposal.* Attorney General Miller is proposing legislation to strengthen Iowa's money laundering law by regulating MSBs more closely. The proposal, based on features of model acts drafted by the National Conference of Commissioners on Uniform State Laws and the President's Commission on Model State Drug Laws, would do the following:

(a) Provide regulatory authority to the superintendent of banking for licensing and regulation of money service businesses in the state.

(b) Require MSBs to be licensed and pay a fee to the superintendent to finance the regulatory work. A criminal background check would be required of all license applicants.

(c) Require MSBs to keep records of all cash transactions and make the records available to the superintendent for inspection and review. Information required to be recorded will be the name of the person doing the cash-related transaction, the amount of the transaction, and other pertinent information.

(d) Provide for Civil Penalties

C The superintendent could assess a civil penalty not to exceed \$1,000/day against a person who violated the act plus the state's

- costs and attorneys fees.
- C The superintendent could issue an order suspending or revoking the license of an authorized delegate or issue an order requiring the licensee or authorized delegate to cease and desist from the violation, and from providing services.

(e) Provide for Criminal Penalties

- C A class “D” felony could be imposed against a person who made a false statement, misrepresentation, or false certification in a record required to be maintained under the act or that intentionally made a false entry or omitted a material entry.
- C An aggravated misdemeanor could be imposed against a person who engaged in any activity for which a license is required without being licensed and receives more than \$500 in compensation from the activity.
- C A serious misdemeanor will be imposed if a person who engages in any activity for which a license is required, without being licensed and receives no more than \$500 compensation from the activity .

By targeting illicit transactions occurring at MSBs, the proposal would help to eliminate the financial base critical to the survival of criminal enterprises. When New York started regulating MSBs, money sent to Columbia dropped by 30%. Enacting this proposal would enable state authorities to trace those who use MSBs for illegal purposes and those who convert their MSB into a means to launder money. In turn, legitimate MSBs would gain an opportunity to grow.

The proposal also is important because the superintendent, in monitoring the records of MSBs, would not only be able to discern possible illegal activity, but also the solvency of the MSBs, so as to protect consumers.

(4) *Grant from U.S. Department of Justice.* The Attorney General’s Office and the Iowa Department of Public Safety (DPS) received a grant last year from the U.S. Department of Justice for \$269,000 to create the Iowa Financial Crimes Task Force (Task Force).

The grant monies are being used for salary and benefits for a full-time criminal analyst and a full-time agent at DPS along with an assistant attorney general to be phased in from part-time

to full-time over the 18-month grant period. Existing resources of \$60,000 are used to support training, technical assistance, and supervisory functions of the Task Force.

The Task Force implements intelligence-led policing efforts to address money laundering in Iowa and coordinates money laundering investigations and prosecution efforts within the state. The Task Force also provides training to local, state and federal government officials and private industry representatives.

With the passage of this proposal by the Legislature, the Financial Crimes Task Force along with law enforcement authorities would have the tools to be able to effectively target money laundering criminals.

### **Admitting Evidence of Past Criminal Behavior.**

a. Background. Social science research has established that sex offenders are more likely than other offenders to repeat their criminal sexual behavior. Evidence of prior sex offenses in a sexual abuse case is therefore especially relevant and helpful to jurors.

Under current Iowa law, evidence of such prior offenses may be admitted under Iowa Rule of Evidence 404(b) as prior bad acts if relevant to “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of a mistake or accident.” However, the application of Rule 404 (b) varies greatly from one case to the next. Prosecutors are unable to predict whether jurors will be permitted to hear evidence of a defendant’s prior sex crimes. Prosecutors also are unable to predict if the admission of prior acts evidence will be upheld on appeal.

Disclosure that the defendant has previously committed other “similar” crimes would be crucial to jurors as they attempt to assess the credibility of the defense claim that the defendant is being falsely accused.

b. Proposal. This legislative proposal is based on the Federal Rules of Evidence 413 and 414 (effective in 1995) which allow for evidence of similar crimes in sexual assault cases and child molestation cases. This proposal would allow prior sex offenses to be presented as evidence in a criminal case if the trial court determined that prior bad acts are relevant to the case.

### **Child Endangerment Resulting in Death.**

a. Background. There is a gap in Iowa law when it comes to persons whose acts cause



the death of a child. Iowa's current child endangerment law is broken down as follows:

1. Child Endangerment not resulting in serious injury - Aggravated Misdemeanor.
2. Child Endangerment resulting in serious injury - Class C Forcible Felony.
3. Child Endangerment, Multiple Acts - Special Class B Forcible Felony.
4. Murder First Degree (person kills a child while committing child endangerment under 726.6(1)(b) or while committing an assault on the child under 708.1). Must prove malice aforethought.

If a death results from an act of child endangerment and the State is unable to prove malice aforethought or extreme indifference to human life, then the next lesser included offense that is typically applicable is involuntary manslaughter, either a Class D Felony or an Aggravated Misdemeanor.

In a prosecution of an adult murdering another adult, the crimes of second degree murder or voluntary manslaughter can be considered. However, typically in child deaths the serious provocation element required in voluntary manslaughter is inapplicable since a child is physically and emotionally incapable of causing serious provocation.

b. Proposal. The law in Iowa needs to allow for the possibility that a child death may result from the commission of child endangerment without proof the perpetrator possessed malice aforethought or acted with extreme indifference to human life. Placing a criminal punishment for committing child endangerment resulting in death would close the gap described above. Given the serious nature of the crime, it should be set as a Special Class B Forcible Felony carrying a fifty year sentence. This sentence would place this crime of Child Endangerment in line with Child Endangerment, Multiple Acts.

## **Firearms.**

a. Background. According to the Iowans to Prevent Gun Violence, approximately 188 Iowans die every year as a result of gun violence. Recent reports indicate that gun violence is on the rise in Iowa. Firearms should be taken away from criminals and other dangerous individuals. However, enforcement of firearm laws has been an uphill battle for law enforcement. There are two impediments:

(1) *Federal law.* Federal prohibits a broad range of criminals and other individuals from having possession, dominion or control of a firearm including: (a) convicted felons, (b) persons who have been committed to a mental institution, (c) illegal immigrants, (d) persons who have receive a dishonorable discharge from the Armed Forces, (e) persons who have renounced their US citizenship, (f) persons subject to no-contact orders for harassment or stalking charges, (g) persons who have been convicted of domestic violence, (h) persons who are addicts or are unlawful users of any controlled substance, and (i) persons who are fugitives from justice.

Although these restrictions are broad, federal law enforcement agencies do not have the resources to effectively enforce them in Iowa and Iowa law enforcement officials do not have the authority to enforce them in Iowa.

(2) *Iowa Law.* Iowa law only prohibits convicted felons from possessing firearms. It does not cover the additional categories covered under federal law. Under Iowa law, dangerous individuals who are not convicted felons can freely possess firearms.

b. Proposal. Iowa can easily address this issue by making state law more consistent with Federal law. Enforcement will be more responsive because it will eliminate the delays caused by referrals to federal agencies yet still provide the option to indict federally if that is a more appropriate venue. Local law enforcement will also have the ability to independently exercise their discretion in the filing of charges.

Under this proposal, if the firearm is not used or intended to be used as evidence, the court, under its discretion, can either: (1) allow the county sheriff to hold the firearm for a fee of \$50 assessed to the defendant, or (2) allow the firearm to be transferred to a qualified and responsible person.

Essentially this proposal will provide state and local prosecutors and law enforcement officials with additional tools they need to protect Iowans from potential gun violence.

## **Counterfeit Merchandise.**

a. Background. There are on-going reports of the manufacture and sale of goods with counterfeit marks across the United States, including sporting goods, clothing, sunglasses, and baby formula. The sales of counterfeit goods has increased in Iowa as other states have increased their enforcement efforts. Sales of counterfeit goods raises serious concerns about business fairness, health and safety of products, and related criminal acts, especially money laundering. While this activity violates federal trademark laws, Iowa law is weak in this area. Iowa law prohibits the use of a counterfeit label, but it does not reach other infringements on intellectual property such trademarks, tradenames, and designs. Iowa law enforcement officials do not have an effective law to address this problem.

b. Proposal. The proposal is based on a model trademark counterfeiting act developed by the International Anti-Counterfeiting Coalition. Statutes similar to the model act have been enacted in twelve states. The proposal would make it a crime to willfully manufacture, use, or sell items or services bearing or identified by a counterfeit mark. A counterfeit mark is defined to be the unauthorized use or copy of intellectual property including any trademark, servicemark, tradename, label, term, device, or design. Any state or federal certificate of registration of intellectual property is prima facie evidence of the status as protected intellectual property. Property bearing counterfeit marks could be seized and forfeited. Investigation of this crime would enhance investigations of money laundering and other potential crimes.

## **Sexual Exploitation of Children.**

a. Background. In 2001, the Legislature enacted legislation to strengthen the ability of prosecutors to convict persons using the internet to sexually exploit minors. Two changes were made that now need to be revised:

(1) *Attempts and Solicitation not Covered.* The law regarding the criminal offense of sexual exploitation of a minor was changed to state that it is “unlawful to employ, use, persuade, induce, entice, coerce, knowingly permit, or otherwise cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act.” Persons who “solicit” or “attempt to cause” a minor to engage in a prohibited sexual act are not covered under this language, creating a loophole in the law.

(2) *Definition of Child Pornography.* The law also was changed to prohibit the

creation of materials depicting a minor engaged in sexually explicit conduct, even if the material actually may be pictures that were technologically “morphed,” or in other words “altered,” from otherwise innocent pictures of children or adults. The changes addressed the “virtual” child pornography issue where there is not an actual picture of a real child, but rather a picture of a computer generated child.

In a recent decision, Ashcroft v. Free Speech, the United States Supreme Court invalidated a portion of a federal statute which, like the Iowa statute, defined child pornography as an image that “appears to be a minor” engaged in a prohibited sex act.

b. Proposal. This proposal would do the following:

- (1) Add the language “solicit” and “attempt to cause” to the current code language.
- (2) Remove the language “appears to be a minor” in order to comply with the Supreme Court constitutional decision. The remaining statutory language adequately addresses “morphed” images of children, a more common problem in internet pornography than “virtual” pornography.

### Criminal Law Policy Positions

In addition to these criminal law legislative proposals, Attorney General Miller takes the following positions on criminal law issues:

a. Substance Abuse Treatment/Diversion/Drug Courts. Maintain, and when fiscally possible, expand substance abuse treatment programs, diversion for treatment, and drug courts.

b. Drunk Driving. Supports legislation establishing .08 as the applicable blood alcohol level (BAC) for drunk driving. According to the Governor’s Traffic Safety Bureau, a person at .08 BAC, is three times more likely to be involved in a traffic crash than if they had not been drinking. National studies estimate that Iowa would save 10-16 lives per year because of reduced drunk driving crashes if .08 were enacted.

